

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
August 13, 2003

ITEM: 17

SUBJECT: Settlement of Potential liability against Shea Homes for violation of SWRCB Order No. 99 08 DWQ, Waste Discharge Requirements for discharges of storm water runoff associated with the Kelly Core construction site located at Cannon Road and Faraday Avenue, Carlsbad in San Diego County. The Regional Board will consider accepting a proposed settlement for the liability in lieu of adopting an ACL. If the Regional Board decides to reject the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Resolution No. R9-2003-0253) (*Vicente Rodriguez*)

PURPOSE: To accept testimony from the public, Shea Homes and the Regional Board regarding the settlement of civil liability contained in Complaint No. R9-2003-0161 prior to deciding whether to adopt tentative Resolution No. R9-2003- 0253.

PUBLIC NOTICE: On June 30, 2003, the public was informed of the proposed settlement of complaint for Administrative Civil Liability by publishing a notice of public hearing in the San Diego Union-Tribune, North County Times, and posting the notice on the Regional Board web site. The written public comment ended on July 30, 2003 and the public comment period ends at the Regional Board meeting, August 13, 2003.

DISCUSSION: On April 16, 2003, the Executive Officer issued Complaint No. R9-2003-0161 Administrative Assessment for Civil Liability in the amount of \$90,000, against Shea Homes for violation of SWRCB Order No. 99-08-DWQ, Waste Discharge Requirements for discharges of storm water runoff associated with construction activity.

The complaint alleges that Shea Homes discharged sediment laden storm water from the Kelly Ranch (also referred to as Kelly Core) construction site in Carlsbad six times in February, March, and April 2003. The complaint also alleges that sediment from the Kelly Ranch construction site discharged directly into the Agua Hedionda Lagoon. The Executive Officer proposed the Regional

Board impose civil liability in the amount of \$60,000 on Shea Homes for the violations cited above.

The complaint also alleges Shea Homes failed to implement an adequate monitoring program in accordance with Order No. 99-08-DWQ, which requires mandatory monitoring for direct discharge to a "303(d)" listed water body. The State of California has identified the Agua Hedionda Lagoon as a water body that does not meet water quality standards because sediment/siltation is a pollutant causing impairment. The Executive Officer proposed the Regional Board impose civil liability in the amount of \$30,000 on Shea Homes for the violations cited above.

On June 5, 2003, Shea Homes provided written comments disputing technical aspects of the allegations and raising questions whether the construction site discharges directly to Agua Hedionda Lagoon, the waters of the State upstream of the lagoon, or to land not waters of the State. Clarification of this issue would also help in determining whether the monitoring program is required and if there is liability for not implementing a monitoring program. At the same time, Shea Homes also offered to settle the entire enforcement matter. The settlement offer consists of Shea Homes paying a total of \$60,000 of which \$40,000 would fund a supplemental environmental project (SEP) by the Agua Hedionda Lagoon Foundation and \$20,000 to the State Water Pollution Cleanup and Abatement Account. Shea Homes also committed to bringing the construction site into full compliance with the construction stormwater permit for the remainder of the project. In return the Regional Board would withdraw the complaint for civil liability.

The Regional Board Executive Officer accepted the offer for consideration by the Regional Board after a 30-day comment period to solicit public input has been established. The Regional Board staff is currently working with Shea Homes and Agua Hedionda Lagoon Foundation on development of a SEP that would be acceptable to the Regional Board.

As of July 30, 2003, the close of the written comment period, the Regional Board has not received any other written comments on the subject matter.

If the Regional Board decides to reject the settlement, the Regional Board could withdraw the complaint and reissue a new complaint.

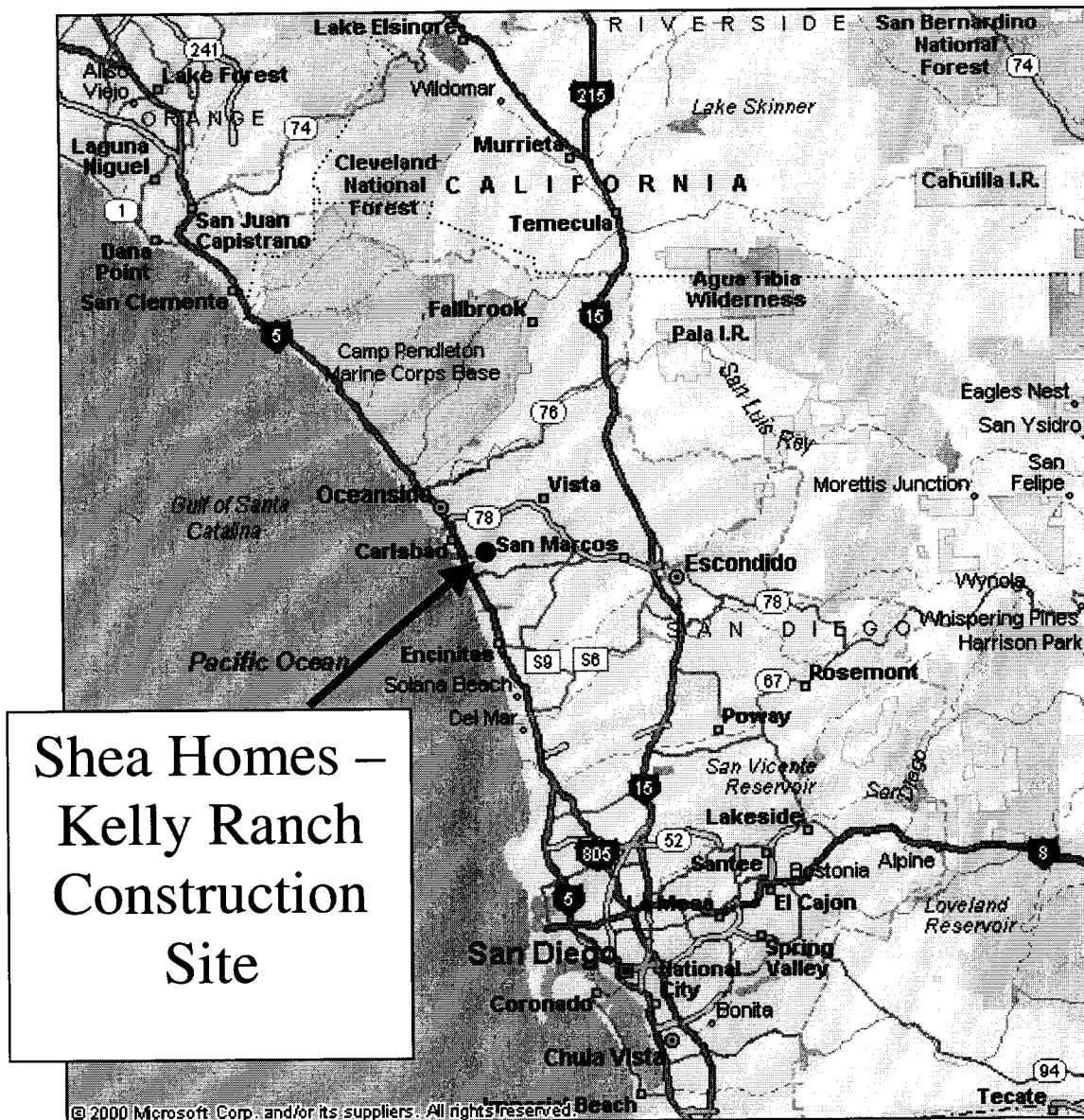
LEGAL CONCERNS:

None.

**SUPPORTING
DOCUMENTS:**

- (1) Location Map of the construction site
- (2) Tentative Resolution No. R9-2003-0253
- (3) Complaint No. R9-2002-0161 dated April 16, 2003
- (4) Shea Homes Settlement Offer dated June 5, 2003
- (5) Regional Board Response dated June 19, 2003

RECOMMENDATION: Staff recommends adoption of tentative Resolution No. R9-2003-0253.



Shea Homes - Kelly Ranch construction site
Cannon Road and Faraday Avenue
Carlsbad, San Diego County
WDID No. 9 37S318049

ITEM 17-2

TENTATIVE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN DIEGO REGION

RESOLUTION NO. R9-2003-0253

SETTLEMENT OF POTENTIAL LIABILITY AGAINST

SHEA HOMES

FOR VIOLATIONS OF SWRCB ORDER NO. 99-08-DWQ, WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES OF STORM WATER RUNOFF ASSOCIATED WITH

THE KELLY RANCH CONSTRUCTION SITE CANNON ROAD AND FARADAY AVENUE CARLSBAD SAN DIEGO COUNTY

Whereas, Shea Homes owns and operates an active construction site on 174 acres of land located at Cannon Road and Faraday Avenue, Carlsbad in San Diego County. This facility, referred to as the Kelly Ranch or Kelly Core construction site, (WDID No. 937S318049) continues to be regulated under the following waste discharge requirements “*State Water Resource Control Board (SWRCB) Order No. 99-08-DWQ (Division of Water Quality) National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, Waste Discharge Requirements (WDRS) for Discharges of Storm Water Runoff Associated with Construction Activity*” (Order No. 99-08-DWQ); and

Whereas, on April 16, 2003, the Executive Officer issued Complaint No. R9-2003-0161 Administrative Assessment for Civil Liability (Complaint) in the amount of \$90,000 against Shea Homes for violation of SWRCB Order No. 99-08-DWQ, Waste Discharge Requirements for discharges of storm water runoff associated with construction activity; and

Whereas, the complaint alleges that Shea Homes discharged sediment laden storm water from the Kelly Ranch construction site six times on February 12, 13, 26, 27, March 16, and April 15, 2003. The complaint also alleges that sediment from the Kelly Ranch construction site discharged directly into the Agua Hedionda Lagoon. The State of California has identified the Agua Hedionda Lagoon on it’s “303(d)” list as a water body that does not meet water quality standards because sediment/siltation is a pollutant causing impairment. The Executive Officer proposed the Regional Board impose civil liability in the amount of \$60,000 on Shea Homes for the violations cited above; and

Whereas, the complaint also alleges Shea Homes failed to implement an adequate monitoring program on February 11, 26, and March 16, 2003 in accordance with Section B: Monitoring Program and Reporting Requirements of Order No. 99-08-DWQ, which requires mandatory monitoring for all construction sites that have stormwater discharge directly to a "303(d)" listed water body. The Executive Officer proposed the Regional Board impose civil liability in the amount of \$30,000 on Shea Homes for the violations cited above; and

Whereas, On June 5, 2003, Shea Homes provided written comments disputing technical aspects of the allegations and raising questions whether the construction site discharges directly to Agua Hedionda Lagoon, or if the discharge is actually to waters of the State upstream of the lagoon or to land not waters of the State. Clarification of this issue would also help in determining whether the monitoring program is required and therefore if there is liability for not implementing the program.

Whereas, Shea Homes also offered to settle the matter without resolution of the potential liability proposed in the Complaint. The settlement offer consists of Shea Homes paying a total of \$60,000 of which \$40,000 would fund a supplemental environmental project (SEP) by the Agua Hedionda Lagoon Foundation and \$20,000 would be deposited in the Cleanup and Abatement Account administered by the State Water Resources Control Board. Shea Homes also committed to bringing the construction site into full compliance with the construction stormwater permit for the remainder of the project. As of June 9, 2003, Shea Homes has been taking cooperative action to address and resolve violations of Order No. 99-08-DWQ.

Whereas, the Agua Hedionda Lagoon Foundation established in 1990, is a non-profit corporation chartered to conserve, restore, and enhance the natural resources of the Agua Hedionda Lagoon; and

Whereas, the Regional Board Executive Officer accepted the offer for consideration by the Regional Board and has established a 30-day comment period to solicit public input. If the Regional Board accepts the settlement, the complaint for civil liability will be withdrawn from consideration; and

Whereas, the Regional Board staff is currently working with Shea Homes and Agua Hedionda Lagoon Foundation on an acceptable SEP; and

Whereas, the Regional Board has incurred costs in the amount of approximately \$9,600 to issue the Complaint. The Regional Board has also invested an estimated 90 hours as follow-up investigation and settlement of the matter at an average rate of \$90 per hour for \$8,100. The total expenditure by the Regional Board is \$17,700 regarding this matter.

THEREFORE BE IT RESOLVED, that the California Regional Water Quality Control Board, San Diego Region, hereby authorizes the Executive Officer to execute a settlement agreement with Shea Homes involving payment of \$40,000 to the Agua Hedionda Lagoon Foundation and \$20,000 to the State Water Pollution Cleanup and Abatement Account by September 12, 2003 in lieu of any formal enforcement proceeding to impose civil liability on Shea Homes for possible violations associated with Order No. 99-08-DWQ between February and April 2003 and authorizes the Executive Officer to withdraw the Complaint.

This Resolution was issued by the California Regional Water Quality Control Board, San Diego Region, on August 13, 2003.

TENTATIVE

JOHN H. ROBERTUS
Executive Officer

Date Signed: _____

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

In the matter of:)	
)	Complaint No. R9-2003-0161
Shea Homes)	For
10721 Treena Street, Suite 200)	Administrative Civil Liability
San Diego, CA 92131)	
)	
<u>Attn: Greg Ponce</u>)	

YOU ARE HEREBY GIVEN NOTICE THAT:

BACKGROUND

1. Shea Homes owns and operates an active construction site on 174 acres of land located at Cannon Road and Faraday Avenue, Carlsbad in San Diego County. This facility, referred to as the Kelly Core construction site, (WDID No. 9 37S318049) continues to be regulated under the following waste discharge requirements "*State Water Resource Control Board (SWRCB) Order No. 99-08-DWQ (Division of Water Quality) National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, Waste Discharge Requirements (WDRS) for Discharges of Storm Water Runoff Associated with Construction Activity*" (Order No. 99-08-DWQ).
2. Shea Homes discharged sediment laden storm water from the Kelly Core construction site in Carlsbad during the winter rainy season from October 2002 through April 2003. To compound the problem, sediment from the Kelly Core construction site discharged directly into the Agua Hedionda Lagoon, a State of California water body on the "303(d)" list. Order No. 99-08-DWQ requires mandatory monitoring for direct discharge to a "303(d)" listed water body. The State of California has identified the Agua Hedionda Lagoon as a water body that does not meet water quality standards because sediment/siltation is a pollutant causing impairment.

ALLEGATIONS

3. Shea Homes violated waste discharge requirement A.2 of the SWRCB Order No. 99-08-DWQ. Shea Homes failed to prohibit discharges of sediment to the municipal separate storm sewer system or waters of the United States by discharging sediment-laden run-off into the Agua Hedionda Lagoon on February 12, 2003.
4. Shea Homes violated waste discharge requirement A.2 of the SWRCB Order No. 99-08-DWQ. Shea Homes failed to prohibit discharges of sediment to the municipal separate storm sewer system or waters of the United States by discharging sediment-laden run-off into the Agua Hedionda Lagoon on February 13, 2003.

5. Shea Homes violated waste discharge requirement A.2 of the SWRCB Order No. 99-08-DWQ. Shea Homes failed to prohibit discharges of sediment to the municipal separate storm sewer system or waters of the United States by discharging sediment-laden run-off into the Agua Hedionda Lagoon on February 26, 2003.
6. Shea Homes violated waste discharge requirement A.2 of the SWRCB Order No. 99-08-DWQ. Shea Homes failed to prohibit discharges of sediment to the municipal separate storm sewer system or waters of the United States by discharging sediment-laden run-off into the Agua Hedionda Lagoon on February 27, 2003.
7. Shea Homes violated waste discharge requirement A.2 of the SWRCB Order No. 99-08-DWQ. Shea Homes failed to prohibit discharges of sediment to the municipal separate storm sewer system or waters of the United States by discharging sediment-laden run-off into the Agua Hedionda Lagoon on March 16, 2003.
8. Shea Homes violated waste discharge requirement A.2 of the SWRCB Order No. 99-08-DWQ. Shea Homes failed to prohibit discharges of sediment to the municipal separate storm sewer system or waters of the United States by discharging sediment-laden run-off into the Agua Hedionda Lagoon on April 15, 2003.
9. Shea Homes violated waste discharge requirement C.4 of the SWRCB Order No. 99-08-DWQ. Shea Homes failed to implement an adequate monitoring program in accordance with Section B: Monitoring Program and Reporting Requirements. Shea Homes failed to analyze samples on February 11, 2003 for Settleable Solids and Total Suspended Solids.
10. Shea Homes violated waste discharge requirement C.4 of the SWRCB Order No. 99-08-DWQ. Shea Homes failed to implement an adequate monitoring program in accordance with Section B: Monitoring Program and Reporting Requirements. Shea Homes failed to collect a sample on February 26, 2003.
11. Shea Homes violated waste discharge requirement C.4 of the SWRCB Order No. 99-08-DWQ. Shea Homes failed to implement an adequate monitoring program in accordance with Section B: Monitoring Program and Reporting Requirements. Shea Homes failed to analyze samples on March 16, 2003 for Settleable Solids and Total Suspended Solids.

AUTHORITY TO IMPOSE CIVIL LIABILITY

12. Shea Homes is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), may impose liability under Section 13385 of the California Water Code.
 - a) 13385 (a)(2) provides that any person who violates waste discharge requirements shall be civilly liable.

- b) Section 13385 (c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs and where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

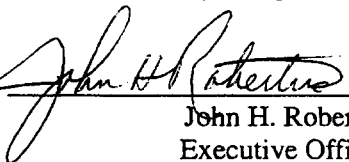
PROPOSED CIVIL LIABILITY

13. The Executive Officer proposes the Regional Board impose civil liability in the amount of \$90,000 on Shea Homes for the violations cited above.

PUBLIC HEARING

14. A public hearing on this matter has been scheduled at the Regional Board meeting on
June 11, 2003,
at the Regional Board Meeting Room,
9174 Sky Park Court, Suite 100, San Diego, California.
15. The meeting is scheduled to begin at 9:00 a.m. A copy of the agenda for the June meeting, which provides information pertaining to submittal of information and hearing procedures, will be sent to you under separate cover toward the end of May 2003:
16. At the hearing, Shea Homes will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board.
17. At the hearing, the Regional Board will determine the validity of the allegations contained herein, and if the allegations are found to be true, will consider whether or not to assess civil liability in the amount proposed by this complaint, or in some other amount. The Regional Board may refer the matter to the Attorney General for judicial assessment of civil liability (with higher maximum liabilities for each violation).

Dated this 16th day of April, 2003

By 
John H. Robertus
Executive Officer

LUCE FORWARD

ATTORNEYS AT LAW • FOUNDED 1873
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

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CONTROL BOARD

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24426-00042

June 5, 2003

***Via Facsimile and
United States Mail***

Mr. John H. Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Re: *Shea Homes/Kelly Ranch*
ACL Complaint No. R9-2003-0161 – Settlement

Dear John:

This will confirm the agreement that was reached at our meeting today between Shea Homes and representatives of the Regional Water Quality Control Board staff wherein we agreed to resolve the ACL complaint currently pending and scheduled for hearing on June 11, 2003 as follows:

1. Complaint No. R9-2003-0161 will be withdrawn/dismissed.
2. Shea Homes will make contribution in lieu of assessment of civil liability in a total amount of \$60,000.00, of which \$40,000.00 will be paid to the Agua Hedionda Lagoon Foundation for a supplement environmental project, and \$20,000.00 will be paid to the State of California Cleanup and Abatement account.
3. Shea Homes will provide technical assistance to the Agua Hedionda Lagoon Foundation in its fund raising efforts.
4. Shea Homes is and will remain in compliance with the General Permit and all applicable storm water regulations at Kelly Ranch, which will be confirmed by an inspection by Christopher Means of your office.
5. The settlement is without an admission of liability and will resolve all liability which was alleged or could have been alleged in ACL Complaint No. R9-2003-0161, including all past violations at Kelly Ranch.

Mr. John H. Robertus
June 5, 2003
Page 2

6. The hearing currently scheduled for June 11, 2003 in this matter will be postponed to permit public notice of this settlement. Shea Homes hereby waives its right to require a hearing be held within 90 days of the issuance of the ACL Complaint pursuant to Water Code Section 13323(b).

Thank you for your cooperation in this matter. If you have any questions concerning any of the above, please do not hesitate to contact me.

Sincerely,



Stephen L. Marsh
of
Luce, Forward, Hamilton & Scripps LLP

SLM:rj

cc: Mr. Paul Barnes
John Richards, Esq.
Mr. Mark Alpert (facsimile/mail)
Mr. Vincente Rodriguez
Mr. Christopher Means

1865176.1



California Regional Water Quality Control Board

San Diego Region

Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb9/>
9174 Sky Park Court, Suite 100, San Diego, California 92123
Phone (858) 467-2952 • FAX (858) 571-6972



June 19, 2003

Certified Mail – Return Receipt Requested
7003 0500004 6402 6098

Attn: Mr. Greg Ponce
Shea Homes
10721 Trenea Street, Suite 200
San Diego, CA 92131

WDID: 9 37S318049
File No.: 10-3018049.02

Dear Mr. Ponce:

30 Day Notice: Proposed Settlement of Complaint No. R9-2003-0161, Administrative Civil Liability Issued Pursuant to the Porter-Cologne Water Quality Control Act Section 13385

As you know, on June 11, 2003, the Regional Water Quality Control Board - San Diego Region, (Regional Board) took no action on ACL Complaint No. R9-2003-0161 to allow consideration of your proposed settlement of this matter. The terms of the settlement are summarized in the letter from your attorney, Steven L. Marsh, dated June 5, 2003.

I would like to clarify item number five which states that *[t]he settlement is without an admission of liability and will resolve all liability which was alleged or could have been alleged in ACL Complaint No. R9-2003-0161, including all past violations at Kelly Ranch.* The Regional Board agrees to withdraw the complaint. Although the ACL complaint is withdrawn, that procedure does not alter our findings of the alleged violations documented at your site. Therefore, if an ACL is justified in the future for new violations, the amount of liability assessed would then also be based on consideration of all past violations, the Shea Homes response to the violations, as well as other factors established in the California Water Code. ACL Complaint No. R9-2003-0161 can and would be used as part of the history of Shea Homes.

I have determined that it is in the best interest of the Regional Board to resolve the matter of these violations by accepting your settlement conditions with the clarification noted above. In addition to the terms of the settlement summarized in the letter from your attorney, I am going to direct your attention to four points that I will emphasize are an essential part of the settlement.

1. The site must be in compliance with the General Permit now and must remain in compliance during the rain season later this year. Compliance will be determined in at least two inspections by a Regional Board inspector on June 9, 2003 and by October 1, 2003.
2. If violations are found during these inspections, you and your staff must provide cooperative action to address and resolve the violations. If violations are found, cooperation will be determined and declared in at least two status/inspection reports by a Regional Board inspector by June 23, 2003 and October 31, 2003.

California Environmental Protection Agency

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3. The construction site must at all times show the future likelihood of compliance to protect waters of the state. There must be no discharge violations.
4. Shea Homes must make payment to the State Water Pollution Cleanup and Abatement Account (CAA) of \$20,000 and payment of \$40,000 for the aid of completion of a supplemental environmental project (SEP). Failure to complete the SEP by the proponent's timeline will require Shea Homes to make payment of \$40,000 to the CAA.

Assuming you concur with the clarification stated above, interested persons will be given 30 days to comment on the amount and terms of the settlement agreement. The public comment period for this item will begin on June 30, 2003 and end on July 30, 2003.

Subsequently, the Regional Board will consider acceptance of the proposed settlement during their regular meeting of August 13, 2003. This meeting will begin 9:00 a.m. and be held at the Regional Board Meeting Room, 9174 Sky Park Court, Suite 100, San Diego, California. The Regional Board will send you an agenda towards the end of the month of July and include copies of all comments received, if any were submitted.

If you have any questions, please contact Mr. Vicente Rodriguez of my staff at (858) 627-3940.

Respectfully,



JOHN H. ROBERTUS
Executive Officer

JHR:mpm:mja:vrr

- Enclosures:
- 1.) Shea Homes/Kelly Ranch, ACL Complaint No. R9-2003-0161 – Settlement dated June 5, 2003 from Stephen L. Marsh
 - 2.) Notice of Public Hearing

cc: Mr. Steven L. Marsh
Luce, Forward, Hamilton & Scripps LLP
600 West Broadway, Suite 2600, San Diego, CA 92101

City of Carlsbad
Public Works Department
Attn: Lloyd Hubbs
5950 El Camino Real, Carlsbad, CA 92008

City of Vista
Engineering Department
Attn: Dan York
P.O. Box 1988, Vista, CA 92085-1988

City of Oceanside
Attn: Mo Lahsaiezadeh
300 North Coast Highway, Oceanside, CA 92054

City of San Marcos
Attn: Jason Boyens
201 Mata Way, San Marcos, CA 92069-2948

Agua Hedionda Lagoon Foundation
P.O. Box 4004, Carlsbad, CA 92018

Building Industry Association of San Diego County
6336 Greenwich Drive, Suite A, San Diego, CA 92112-5922

Shea Homes R9-2003-0161 Settlement Transmittal Letter [mpm].doc